



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hamilton Products Group, Inc.
File: B-233067
Date: October 24, 1988

DIGEST

Agency's acceptance of proposal for modular vault system which did not meet the solicitation requirement for Underwriters Laboratory certification is not objectionable where offer satisfied agency's needs and the other offeror was not prejudiced by the agency's actions because it competed on the same basis as did the awardee.

DECISION

Hamilton Products Group, Inc. protests the award of a contract to Mosler, Inc. under request for proposals (RFP) No. XXXX-820055, issued by the Department of State for a modular vault system. Hamilton Products asserts that Mosler's proposal is unacceptable because Mosler failed to offer a vault which is both certified by Underwriters Laboratories (UL) and tested to State Department Standard SD-STD-01.05. The solicitation required that the vault system offered meet the Class M requirements of UL and the State Standard.

State received offers from Hamilton Products and Mosler. After discussions, best and final offers (BAFOs) were submitted and award was made to Mosler whose price was approximately \$1,000 less than Hamilton Products' price of \$121,680.

According to Hamilton Products, while it and Mosler have modular vault systems which have been certified as meeting UL Class M requirements, both firms had to modify their vaults in order to comply with State SD-STD-01.05, and even though it and Mosler submitted UL certifications with their proposals, in both cases the certifications did not apply to the vaults as modified. Hamilton Products says that it advised the agency during discussions that neither product, as modified, had been tested or certified as meeting UL requirements and that the specification was essentially

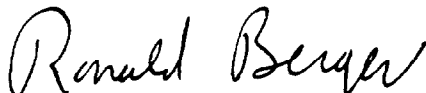
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defective. The agency proceeded to request BAFOs and in the protester's view improperly waived the requirement.

There is no merit to this protest. Even where specifications are defective, if the acceptance of an offer will satisfy the government's needs and no offeror will thereby be prejudiced, award should be made notwithstanding the defect. See Dunlin Corp., B-207964, Jan. 4, 1983, 83-1 CPD ¶ 7.

Here, based on the protester's own statements that it advised the agency that the vaults had to be modified and that the modified vaults did not meet the UL requirements, it seems apparent that the agency believes its needs can be satisfied by the offered equipment notwithstanding the specification provisions. Moreover, it is also clear that Hamilton Products was not prejudiced by the agency's decision to award on the basis of the offered equipment, since the company participated in the procurement on exactly the same basis as did the awardee--by offering a modified vault that did not meet UL requirements. The protester did not receive the award simply because its offer was not low.

Under the circumstances, we find that the Hamilton Products submission does not state a valid basis for protest. Therefore, pursuant to 4 C.F.R. § 21.3(m) (1988), the protest is dismissed.



Ronald Berger
Associate General Counsel